IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6083 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAMESHKUMAR MULJOBHAI SOLANKI

Appearance:

1. Special Civil Application No. 6083 of 2001

MR KP RAVAL AGP for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/08/2004

ORAL JUDGEMENT

1.0 The State of Gujarat through the Public Works Department has challenged the award dated 20/10/2000 in Reference (LCR) No.789/1996 passed by the Labour Court, Ahmedabad, whereby the petitioner State Government was directed to reinstate the respondent workman to his original post and to pay salary from 26/09/95 till the respondent workman is reinstated or recalled as per the seniority list of daily wagers of the petitioner

Government at the rate of twelve days per month.

2.0 The respondent workman was working as a Rojamdar with the petitioner Government and his services came to be terminated w.e.f. 01/11/85. Feeling aggrieved by the said order of his termination, the respondent workman preferred reference before the Labour Court, Ahmedabad which came to be allowed by order dated 20/10/2000.

3.0 Mr.K P Raval learned AGP appearing for the petitioner Government has contended that though it is alleged that the respondent workman was relieved from his services in 1985, the Reference was preferred very late, as late as on 16/05/96. The respondent workman has not explained the delay for the period from 01/11/85 to 16/05/96. He has further contended that since the respondent workman was a daily wager, the State Government was not required to follow the procedure prescribed under the Act.

3.1 Mr.K P Raval learned AGP has relied upon a decision in the case of Shankerji Cheljaji Thakor v. State of Gujarat reported in 2000 (1) G.L.H. 482 wherein it has been held that the Irrigation Department of the State Government is not an `Industry' under the provisions of the Industrial Disputes Act, 1947.

4.0 Mr.T R Mishra learned advocate appearing for the respondent workman has contended that the respondent workman had worked with the petitioner Government from 1982 to 1985 and though he was required to be recalled under Sections 25-G & 25-H of the Industrial Disputes Act, 1947, the petitioner Government has not done so. Therefore, the respondent workman had waited for the said period, which resulted in his preferring the Reference before the Labour Court at a belated stage.

5.0 I have heard the learned counsel for the parties and have gone through the award of the Labour Court. The argument advanced by Mr.K P Raval learned AGP cannot be accepted in view of the subsequent decision of this Court in the case of Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat reported in 2004 (2) G.L.H. 302 [Equivalent : 2004 (2) G.L.R. 1488], wherein it has been held that the Irrigation Department of the State Government is an `Industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Therefore, the contention raised by Mr.Raval cannot be accepted.

6.0 In the result, the award of the Labour Court is

required to be modified to the extent below;

6.1 The petitioner Government is directed to reinstate the respondent workman to his original post and continuity of service is directed to be given to the respondent workman, for the purpose of counting of service for benefits, as per Government Resolution dated 17/10/88 and not for any other benefits. The respondent workman will not be entitled for increments for the above period.

6.2 The respondent workman will be entitled for twelve days salary per month as directed by the Labour Court and the same be paid for the period from 26/09/95 till the respondent workman is reinstated or recalled as per the seniority list of daily wages employees of the petitioner.

6.3 The petitioner Government is directed to comply with the order of this Court within a period of three months from the date of receipt of writ of this order, failing which the respondent workman will be entitled for salary, on minimum monthly basis, which may be recovered from the erring Officer of the petitioner Government. Mr.T R Mishra undertakes to supply a certified copy of this order to the petitioner.

6.4 With the aforesaid directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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